June 25, 2019

The Honorable Lamar Alexander
Chairman
Senate Committee on Health, Education,
Labor and Pensions
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Senate Committee on Health, Education,
Labor and Pensions
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

Employers are deeply concerned about the burden that unexpected medical bills from out-of-network providers place on employees and their families. We applaud you for seeking a solution to surprise medical billing in S. 1895, the "Lower Health Care Costs Act." We share your goal to protect patients from surprise medical bills without undermining network participation or increasing health care costs for all consumers. While we urge members of the Committee to support Title I of the legislation, we also ask that you make a few modifications detailed below to further control cost and decrease premiums.

We recognize and underscore that not all providers are contributing to the problem of surprise medical billing. Indeed, the problem is concentrated among certain specialties where patients have no meaningful role in their selection and may not even be aware that an out-of-network doctor is providing their care. A lack of meaningful patient choice in selecting these specialized providers allows the providers to charge excessive rates by staying out-of-network, generating surprise bills. A study by Ge Bai and Gerard F. Anderson, published in JAMA in 2017, found that anesthesiologists charge out-of-network, on average, 580% of the Medicare reimbursement rate and radiologists charge out-of-network, on average, 450% of the Medicare rate.

This constitutes a market failure that limits the benefit of networks in controlling costs for patients and employers. **To ensure equitable payment for the services provided without discouraging network participation or resulting in higher costs for all consumers, we strongly recommend the benchmark be set *at the lower of* the median in-network rate or 125% of the Medicare rate.** Solutions that reduce the occurrence of surprise bills in the first place are also important to protect patients.

Setting the benchmark rate solely on the median-in network rate could memorialize and encourage the high in-network rates some providers receive today. For example, in a large survey conducted by the American Society of Anesthesiologists, commercial *in-network* payments to anesthesiologists averaged nearly 350% of Medicare rates in 2018. The story is similar for some emergency physicians that received *in-network* rates averaging 300% of what Medicare pays (out-of-network rates averaged about 800% of what Medicare pays)[1]. The fact that these specialists could remain out-of-network without jeopardizing patient volume allows them to demand very high in-network rates compared to other physicians who cannot afford to stay out-of-network. Unfortunately, these egregious in-network rates would likely be factored into the calculation of the median negotiated rate used in your legislation.

[1] https://www.brookings.edu/research/state-approaches-to-mitigating-surprise-out-of-network-billing/

For these reasons, we urge you to end surprise billing by setting the benchmark *at the lower of* the median in-network rate or 125% of the Medicare rate. In previous correspondence, we have suggested using 125% of Medicare in certain instances. In our view, Medicare is a clear and fair reference point for reimbursement. Using a Medicare-based benchmark will best correct the market distortions that have driven surprise bills and achieve the objective of the committee's broader effort to lower health care costs. Expectedly, some providers most likely to benefit from enshrining these market distortions may argue that 125% of the Medicare rate is too low, thus forcing them to charge employers and other commercial payers higher rates. In fact, Medicare determines reimbursement rates in part by relying on feedback and recommendations from the same medical specialists who benefit from higher Medicare prices. Additionally, a Medicare Payment Advisory Committee (MedPAC) analysis of commercial claims data showed that contracted payment rates for all physicians averaged 128% of Medicare payment rates.

An examination of the distribution of out-of-network billing for emergency care in hospitals across the U.S., which found that out-of-network billing is concentrated in a small number of hospitals, supports the conclusion that there is more at play than recouping any purported negative profit margins from Medicare. While 50% of hospitals have out-of-network billing rates below two percent, the study by Zack Cooper, Fiona Scott Morton and Nathan Shekita found that 15% of hospitals have out-of-network billing rates above 80%.

We applaud you for also ending surprise air ambulance bills. We recommend you add ground ambulance bills and we also recommend you define the benchmark payment *as the lower of* the median in-network rate or 125% of the Medicare rate for these services. According to GAO's analysis of the most complete data identified for air ambulance transports of privately-insured patients, 69% of about 20,700 transports in the data set were out-of-network in 2017. Other analysis shows 50% of all ambulance cases involved an out-of-network ambulance in 2014.

We recognize you are working to balance the many disparate interests of the members of the committee, and we sincerely appreciate you are solving the problem of surprise bills for our employees and their families. Our concerns and suggestions reflect the downstream consequences for patients and employees, who will likely be faced with higher premiums if market failures continue to allow certain specialty providers to charge exorbitant in-network rates.

As you know, employers provide coverage to over 181 million Americans. We are committed to ensuring our employees and their families continue to have access to meaningful coverage – this is both the right thing to do and it also helps our businesses thrive as our employees are healthier and more productive. Ending surprise medical billing in a way that protects patients without undermining network participation or increasing health care costs for all consumers is a critical step to take and we applaud your leadership.

We appreciate the hard work of your committee and look forward to assisting you in enacting these important reforms.

Sincerely,

American Benefits Council
AFL-CIO
American Rental Association
American Staffing Association
Associated Builders and Contractors
Auto Care Association
Corporate Health Care Coalition
Economic Alliance for Michigan
Food Marketing Institute
HR Policy Association
National Alliance of Healthcare Purchaser Coalitions
National Association of Health Underwriters
National Association of Wholesaler-Distributors
National Business Group on Health
National Retail Federation
Pacific Business Group on Health
Partnership for Employer Sponsored Coverage
Retail Industry Leaders Association
Retailers Association of Massachusetts
Society of Professional Benefit Administrators
The ERISA Industry Committee

cc: Members, Senate HELP Committee
Members, United States Senate